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OFFICE OF PETITIONS

In re Application of	:	
Daniel J. Burdick et al.	:	
Application No. 10/649,762	:	
Filed: August 26, 2003	:	DECISION ON PETITION UNDER
Attorney Docket No. P1365R2C1	:	37 C.F.R. §1.182
Title: ANTAGONISTS FOR TREATMENT	:	
OF CD/11CD18 ADHESION RECEPTOR	:	
MEDIATED DISORDERS	:	

This is a decision on the petition under 37 C.F.R. §1.182, filed December 10, 2003, requesting that the above-identified application be accorded a filing date of August 26, 2003, with Figures 1-5 as part of the original disclosure of the application.

The application was deposited on August 26, 2003. However, on November 17, 2003, the Office of Initial Patent Examination (OIPE) mailed a "Notice of Incomplete Nonprovisional Application – Filing Date not Granted" (notice) stating that the application had not been accorded a filing date, and advising applicants that a filing date would be accorded upon the depositing of drawings. The notice set a two-month period for response.

On December 10, 2003, Petitioner filed the instant petition. Petitioner has included Figures 1-5, and has set forth that these figures were omitted on filing, Petitioner further contended that they were constructively included, through incorporation by reference.

It is noted that the claims of the present application are directed towards a composition. MPEP 608.02 states, in part:

An OIPE formality examiner should not treat an application without drawings as incomplete if drawings are not required. A drawing is not required for a filing date under 35 U.S.C. 111 and 113 if the application contains:

- (A) at least one process claim including the term "process" or "method" in its introductory phrase;

- (B) at least one composition claim including the term composition," "compound," "mixture" or "pharmaceutical" in its introductory phrase;
- (C) at least one claim directed to a coated article or product or to an article or product made from a particular material or composition (i.e., an article of known and conventional character (e.g., a table), coated with or made of a particular composition (e.g., a specified polymer such as polyvinyl-chloride));
- (D) at least one claim directed to a laminated article or product (i.e., a laminated article of known and conventional character (e.g., a table)); or
- (E) at least one claim directed to an article, apparatus, or system where the sole distinguishing feature is the presence of a particular material (e.g., a hydraulic system using a particular hydraulic fluid, or a conventional packaged suture using a particular material).

For a more complete explanation about when a drawing is required, see MPEP 601.01(f). For applications submitted without all of the drawings described in the specification, see MPEP § 601.01(g).

If an examiner determines that a filing date should not have been granted in an application because it does not contain drawings, the matter should be brought to the attention of the supervisory patent examiner (SPE) for review. If the SPE decides that drawings are required to understand the subject matter of the invention, the SPE should return the application to OIPE with a typed, signed, and dated memorandum requesting cancellation of the filing date and identifying the subject matter required to be illustrated.

Pursuant to this section of the MPEP, it has been PTO practice to treat an application that contains at least one compound, composition, or method claim as an application for which a drawing is not necessary for an understanding of the invention under the first sentence of 35 U.S.C. §113. A review of the record reveals that the claims contain composition claims. Therefore, the present application is deemed to be an application which does not require a drawing for an understanding of the invention.

The petition is **GRANTED-IN-PART**.

The application, as originally filed, is entitled to a filing date of August 26, 2003. The drawings, however, will not be entered.

If Petitioner desires for the Examiner to consider the missing pages which were not submitted as part of the original disclosure, then petitioner may submit those pages as an amendment. Any such amendment will, of course, be reviewed by the examiner for new matter¹. The amendment is not new matter if the substance was a part of the disclosure of the prior application.

The Notice, mailed on November 17, 2003, was sent in error, and is hereby **VACATED**. As such, no petition fee is necessary, and the petition fee has not been charged to Petitioner's Deposit Account.

¹ See MPEP 608.02(h) and 608.04.

The application file is being returned to the OIPE for further processing with a filing date of August 26, 2003, using the application papers filed on that date. OIPE will then mail a corrected filing receipt. The drawings will not be entered.

The general phone number for the Office of Petitions which should be used for status requests is (571) 272-3282. Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.

A handwritten signature in black ink, appearing to read "Paul Shanoski".

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office